

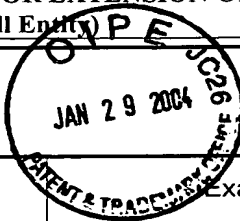
AF/3725

COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. 1.136(a) (Small Entity)			Docket No. <i>AF/3725</i> 8027.00015	
In Re Application Of: Mark Edward Marriott et al.				
Serial No. 09/954,900	Filing Date September 18, 2001	Examiner M. Rosenbaum	Group Art Unit 3725	
Invention: SPRING ASSIST ASSEMBLY FOR INFED PAN OF WOOD CHIPPER				
<div style="position: relative; height: 100px;"> <div style="position: absolute; top: 0; right: 0; text-align: right;"> <p style="font-size: 2em; margin: 0;">RECEIVED</p> <p style="margin: 0;">JAN 03 2004</p> <p style="margin: 0;">TECHNOLOGY CENTER R3700</p> </div> <p style="font-size: 1.2em; margin: 20px 0;"><u>TO THE COMMISSIONER FOR PATENTS:</u></p> <p style="margin: 20px 0;">This is a combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition under the provisions of 37 CFR 1.136(a) to extend the period for filing an Appeal Brief.</p> <p style="margin: 20px 0;">Applicant(s) hereby request(s) an extension of time of (check desired time period):</p> <div style="display: flex; justify-content: space-between; margin: 10px 0;"> <input checked="" type="checkbox"/> One month <input type="checkbox"/> Two months <input type="checkbox"/> Three months <input type="checkbox"/> Four months <input type="checkbox"/> Five months </div> <div style="display: flex; justify-content: space-between; margin: 10px 0;"> from: <u>December 24, 2003</u> until: <u>January 24, 2004</u> </div> <div style="display: flex; justify-content: flex-end; margin-top: 20px;"> <div style="text-align: right; margin-right: 20px;"> The fee for the Appeal Brief and Extension of Time has been calculated as shown below: Fee for Appeal Brief: <u>\$165.00</u> Fee for Extension of Time: <u>\$55.00</u> TOTAL FEE FOR APPEAL BRIEF AND EXTENSION OF TIME: <u>\$220.00</u> </div> </div> <p style="margin: 20px 0;">The fee for the Appeal Brief and extension of time is to be paid as follows:</p> <div style="margin: 10px 0;"> <input checked="" type="checkbox"/> A check in the amount of \$220.00 for the Appeal Brief and extension of time is enclosed. </div> <div style="margin: 10px 0;"> <input type="checkbox"/> Please charge Deposit Account No. _____ in the amount of _____ </div> <div style="margin: 10px 0;"> <input checked="" type="checkbox"/> The Director is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 02-2712 </div> <div style="margin: 10px 0;"> <input checked="" type="checkbox"/> Any additional filing fees required under 37 C.F.R. 1.16. </div> <div style="margin: 10px 0;"> <input checked="" type="checkbox"/> Any patent application processing fees under 37 CFR 1.17. </div> <div style="margin: 10px 0;"> <input checked="" type="checkbox"/> If an additional extension of time is required, please consider this a petition therefor and charge any additional fees which may be required to Deposit Account No. 02-2712 </div> </div>				

COMBINED TRANSMITTAL OF APPEAL BRIEF TO THE BOARD OF PATENT
APPEALS AND INTERFERENCES & PETITION FOR EXTENSION OF TIME
UNDER 37 C.F.R. 1.136(a) (Small Entity)

Docket No.
8027.00015

In Re Application Of: Mark Edward Marriott et al.



Serial No.
09/954,900

Filing Date
September 18, 2001

Examiner
M. Rosenbaum

Group Art Unit
3725

Invention: SPRING ASSIST ASSEMBLY FOR INFEED PAN OF WOOD CHIPPER

TO THE COMMISSIONER FOR PATENTS:

This combined Transmittal of Appeal Brief to the Board of Patent Appeals and Interferences and petition for extension of time under 37 CFR 1.136(a) is respectfully submitted by the undersigned:

RECEIVED
JAN 03 2004
TECHNOLOGY CENTER R3700

Signature

Dated:

January 26, 2004

Daniel H. Bliss (Reg. No. 32,398)
Bliss McGlynn, P.C.
2075 West Big Beaver Road, Suite 600
Troy, Michigan 48084
(248) 649-6090

Certificate of Transmission by Facsimile*

I certify that this document and authorization to charge deposit account is being facsimile transmitted to the United States Patent and Trademark Office (Fax. No.

_____) on _____
(Date)

Signature

Typed or Printed Name of Person Signing Certificate

Certificate of Mailing

I certify that this document and fee is being deposited on January 26, 2004 with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature of Person Mailing Correspondence

Daniel H. Bliss

Typed or Printed Name of Person Mailing Correspondence

*This certificate may only be used if paying by deposit account.

CC:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Art Unit: 3725

Examiner: M. Rosenbaum

Applicant(s): Mark Edward Marriott et al

Serial No.: 09/954,900

Filing Date: September 18, 2001

For: SPRING ASSIST ASSEMBLY FOR INFEED
PAN OF WOOD CHIPPER



APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

By Notice of Appeal filed October 24, 2003, Applicants have appealed the Final Rejection dated July 24, 2003 and submit this brief in support of that appeal.

REAL PARTY IN INTEREST

The real party in interest is the Assignee, Bandit Industries, Inc.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences regarding the present application.

STATUS OF CLAIMS

Claims 1 through 24 have been rejected.

Claims 1 through 24 are being appealed.

CERTIFICATE OF MAILING: (37 C.F.R. 1.8) I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service with sufficient postage as First Class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on January 26, 2004, by Daniel H. Bliss

STATUS OF AMENDMENTS

An Amendment Under 37 C.F.R. 1.116 was filed on October 24, 2003 in response to the Final Office Action dated July 24, 2003. An Advisory Action dated November 10, 2003 indicated that the Amendment under 37 C.F.R. 1.116 had been considered, but would not place the application in a condition for allowance because of reasons of record. Upon the filing of an appeal, there was no indication that the Amendment under 37 C.F.R. 1.116 would be entered. A Notice of Appeal, along with the requisite fee, was filed on October 24, 2003. The Appeal Brief and Request for One Month Extension of Time, along with the requisite fees, are submitted herewith.

SUMMARY OF THE INVENTION

The present invention is an assist assembly 10 for a wood chipper 12. The wood chipper 12 includes an infeed hopper assembly 14 having an inlet 16 to allow wood material to enter the wood chipper 12. The wood chipper 12 may include a feed wheel assembly 17 disposed between and adjacent to the infeed hopper assembly 14 and a cutting assembly 18 for rotation about a horizontal axis adjacent to the feed wheel assembly 17. The wood chipper 12 further includes an infeed pan 24 disposed adjacent the inlet 16 of the infeed hopper assembly 14. The infeed pan 24 has a base wall 26 and a pair of opposed side walls 28 extending generally perpendicular to the base wall 26. The base wall 26 is generally rectangular in shape and the side walls 28 are generally triangular in shape. The infeed pan 24 is pivotally connected to the infeed hopper assembly 14 by suitable means such as a pin 30 extending laterally from each side wall 28 and disposed in a sleeve 32 extending laterally from each side of the infeed hopper assembly 14.

The assist assembly 10 is used to assist the operator in handling the bulk weight of the infeed pan 24 when the infeed pan 24 is raised or lowered.

The assist assembly 10 includes at least one, preferably a plurality of assist brackets or mounts 36 connected to the infeed hopper assembly 14 and spaced laterally along the inlet 16 thereof. Each assist mount 36 has at least one, preferably a pair of side members 38 spaced laterally along a lower member 40 of the infeed hopper assembly 14. Each assist mount 36 also has a support member 42 preferably extending laterally between the side members 38 and through corresponding apertures 44 in each of the side members 38 or from one side member 38.

The assist assembly 10 also includes at least one, preferably a plurality of assist members, generally indicated at 46, to counterforce the bulk weight of the infeed pan 24. The assist members 46 may be of a type such as a spring, pneumatic damper, or gas-assisted cylinders. One of the assist members 46 is associated with one of the assist mounts 36. In one embodiment, the assist member 36 is a spring 47. Each spring 47 may be of a coil type having a plurality of turns or coils 48 and a first end 50 extending outwardly from one end of the coils 48 and a second end 52 extending outwardly from the other end of the coils 48. The second end 52 extends outwardly a greater distance than the first end 50. Preferably, each spring 47 is pre-formed into a general "L" shape. Each spring 47 has the coils 48 disposed about the support member 42 and the first end 50 engaging the lower member 40 of the wood chipper 12 and the second end 52 operatively engaging the infeed pan 24. The first end 50 engages or contacts a lower surface 54 of the lower member 40 such that the first end 50 is generally horizontal or parallel to the lower surface 54. The assist assembly 10 may include a retainer 58 having an aperture 56 extending therethrough. The retainer 58 extends generally perpendicular from the base wall 26 of the infeed pan 24. The second end 52 of the spring 47 extends through the aperture 56 of the retainer 58

such that the second end 52 is spaced from the base wall 26 of the infeed pan 24. The ends 50 and 52 of the spring 47 form a general "L" shape so that as the second end 52 is rotated away and relative to the first end 50, a counter force or pressure is formed to hold some of the weight of the infeed pan 24 and yet allow the infeed pan 24 to lower into an operating position.

An operator (not shown) grasps the infeed pan 24 and rotates the infeed pan 24 downwardly. As the infeed pan 24 is rotated downwardly, the second end 52 of the spring 47 moves farther away from the first end 50 and, since the first end 50 is stationary or fixed, the coils 48 generate a counterforce to hold some of the bulk weight of the infeed pan 24. The operator is assisted by the assist member 46 in handling the bulk weight of the infeed pan 24.

After the wood material is cut or chipped, the engine is stopped. The operator grasps the infeed pan 24 and rotates the infeed pan 24 upwardly. As the infeed pan 24 is rotated upwardly, the second end 52 of the spring 47 moves closer to the first end 50 and the coils 48 relax to reduce the counterforce on the infeed pan 24. The operator is assisted by the assist member 46 in handling the bulk weight of the infeed pan 24.

ISSUE

The issue in this Appeal is statutorily formulated in 35 U.S.C. § 103. Specifically, the issue is whether the claimed invention of claims 1 through 24 is obvious and unpatentable under 35 U.S.C. § 103 over allegedly admitted prior art.

GROUPINGS OF CLAIMS

Claims 1 through 4 stand or fall together in regard to the rejection under 35 U.S.C.

§ 103.

Claims 5 through 16 stand or fall together in regard to the rejection under 35 U.S.C. § 103.

Claims 17 through 23 stand or fall together in regard to the rejection under 35 U.S.C. § 103.

Claim 24 stands or falls together in regard to the rejection under 35 U.S.C. § 103.

ARGUMENT

As to patentability, 35 U.S.C. § 103 provides that a patent may not be obtained:

If the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Id.

The United States Supreme Court interpreted the standard for 35 U.S.C. § 103 in Graham v. John Deere, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). In Graham, the Court stated that under 35 U.S.C. § 103:

The scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or non-obviousness of the subject matter is determined. 148 U.S.P.Q. at 467.

Using the standard set forth in Graham, the scope and content of the prior art relied upon by the Examiner will be determined.

The Background of the Invention section of the present application discloses an example of a wood chipper such as in U.S. Patent No. 5,988,539 to Morey. In this patent, the wood chipper includes an infeed hopper, feed wheel assembly, and a cutting assembly having a

rotatable disc with at least one knife or blade for chipping the wood entering the wood chipper and reducing it to wood chips. Typically, the wood chipper includes an infeed pan pivotally connected to the infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper.

In contradistinction, claim 1 claims the invention as a wood chipper (12) including a movable infeed pan (24) and at least one assist mount (36) connected to the wood chipper (12). The wood chipper (12) also includes at least one assist member (46) connected to the assist mount (36) and to operatively engage the infeed pan (24) to assist an operator in moving a bulk weight of the infeed pan (24) when the infeed pan (24) is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

The United States Court of Appeals for the Federal Circuit (CAFC) has stated in determining the propriety of a rejection under 35 U.S.C. § 103(a), it is well settled that the obviousness of an invention cannot be established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting the combination. See In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 U.S.P.Q. 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 U.S.P.Q. 929 (Fed. Cir. 1984). The law followed by our court of review and the Board of Patent Appeals and Interferences is that “[a] prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.” In re Rinehart, 531 F.2d 1048, 1051, 189 U.S.P.Q. 143, 147 (C.C.P.A. 1976). See also In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984) (“In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be

sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification.”)

As to the differences between the prior art and the claims at issue, the primary reference to the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper. The Background of the Invention section lacks at least one assist member connected to an assist mount and to operatively engage an infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In the wood chipper of the Background of the Invention section, there is no assist member to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised or lowered by the operator.

As to the level of ordinary skill in the pertinent art, to the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator. However, there is absolutely no teaching of a level of skill in the wood chipper art to include at least one assist mount connected to the wood chipper and at least one assist member connected to the assist mount to operatively engage the infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. The wood chipper of the Background of the Invention section of the present application fails to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position. Further, there is no motivation in the art for modifying the wood

chipper of the Background of the Invention section to assist an operator in moving a bulk weight of the infeed pan. The reference, if modifiable, fails to teach or suggest the combination of a wood chipper including a movable infeed pan, at least one assist mount connected to the wood chipper, and at least one assist member connected to the assist mount and to operatively engage the infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator as claimed by Applicants. The Examiner has failed to establish a case of prima facie obviousness.

The present invention sets forth a unique and non-obvious combination of a wood chipper having at least one assist mount connected to the wood chipper and at least one assist member connected to the assist mount to operatively engage the infeed pan. Advantageously, the assist assembly assists the operator in handling the bulk weight of the infeed pan when it is raised or lowered.

Obviousness under § 103(a) is a legal conclusion based on factual evidence (In re Fine, 837 F.2d 1071, 1073, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988)), and the subjective opinion of the Examiner as to what is or is not obvious, without evidence in support thereof, does not suffice. The Examiner may not, because he/she doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See In re Warner, 379 F. 2d 1011, 154 U.S.P.Q. 173 (C.C.P.A. 1967). Because the Examiner has not provided a sufficient factual basis that is supportive of his/her position (see In re Warner, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967), cert. denied, 389 U.S. 1057 (1968)), the rejection of claim 1 is improper.

Against this background, it is submitted that the present invention of claim 1 is not obvious in view of the Background of the Invention section. The reference fails to teach or suggest the combination of a wood chipper of claim 1. Therefore, it is respectfully submitted that claim 1 is not obvious and is allowable over the rejection under 35 U.S.C. § 103.

The law is clear that a claim in dependent form shall be construed to incorporate by reference all of the limitations of the claim to which it refers. 35 U.S.C. § 112, ¶ 4. Dependent claims 2 through 4 perfect and further limit independent claim 1. Claim 2 defines that the at least one assist member comprises a spring. Claim 3 defines that the at least one assist mount comprises at least one side member extending from an infeed hopper assembly of the wood chipper. Claim 4 defines that the at least one assist mount further comprises a support member extending from the at least one side member, the at least one assist member being connected to the at least one support member. Based on the above, it is respectfully submitted that claims 2 through 4 are not obvious and are allowable over the rejection under 35 U.S.C. § 103.

As to independent claim 5, claim 5 claims the invention as a wood chipper (12) including a movable infeed pan (24) and at least one spring mount (36) connected to the wood chipper (12). The wood chipper (12) also includes at least one spring (47) connected to the spring mount (36) and to operatively engage the infeed pan (24) to assist an operator in moving a bulk weight of the infeed pan (24) when the infeed pan (24) is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

The reference cited, either alone or modified, does not teach or suggest the claimed invention of claim 5. Specifically, the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to

an infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper. The Background of the Invention section lacks at least one spring connected to a spring mount to operatively engage an infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In the wood chipper of the Background of the Invention section, there is no spring to assist an operator in moving the infeed pan. There is absolutely no teaching of a level of skill in the wood chipper art to include at least one spring mount connected to the wood chipper and at least one spring connected to the spring mount and to operatively engage the infeed pan. Contrary to the Examiner's opinion, it is not obvious to modify the wood chipper of the Background of the Invention section to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position. The Examiner may not, because he doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See In re Warner, 379 F. 2d 1011, 154 U.S.P.Q. 173 (C.C.P.A. 1967).

The reference, if modifiable, fails to teach or suggest the combination of a wood chipper including a movable infeed pan, at least one spring mount connected to the wood chipper, and at least one spring connected to the spring mount and to operatively engage the infeed pan to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator as claimed by Applicants. The Examiner has failed to establish a case of prima facie obviousness.

The present invention sets forth a unique and non-obvious combination of a wood chipper having at least one spring mount connected to the wood chipper and at least one spring connected to the spring mount to operatively engage the infeed pan. Advantageously, the wood chipper has an assist assembly that has one or more springs positioned to counter the force of the bulk weight of the infeed pan to raise and lower the infeed pan smoothly.

Against this background, it is submitted that the present invention of claim 5 is not obvious in view of the Background of the Invention section. The reference fails to teach or suggest the combination of a wood chipper of claim 5. Therefore, it is respectfully submitted that claim 5 is not obvious and is allowable over the rejection under 35 U.S.C. § 103.

Dependent claims 6 through 16 perfect and further limit independent claim 5. Claim 6 defines that the at least one spring is a coil spring. Claim 7 defines that the at least one spring has a first end extending outwardly and a second end extending outwardly to form a general "L" shape. Claim 8 defines that the at least one spring has a plurality of coils disposed between the first end and the second end. Claim 9 defines that the second end is longer than the first end, the second end being adapted to operatively engage the infeed pan. Claim 10 defines that the wood chipper includes a spring retainer connected to the infeed pan to space the second end from the infeed pan. Claim 11 defines that the wood chipper includes a plurality of spring mounts spaced laterally and secured to an infeed hopper assembly of the wood chipper. Claim 12 defines that the wood chipper includes a plurality of springs, one of the springs being mounted to one of the spring mounts. Claim 13 defines that the spring mounts and one of the springs is located adjacent the infeed pan. Claim 14 defines that the at least one spring mount comprises at least one side member extending from an infeed hopper assembly of the wood chipper. Claim 15 defines that the at least one spring mount further comprises a support member extending from the

at least one side member. Claim 16 defines that the support member is rotatably secured to the at least one side member. Based on this, it is respectfully submitted that claims 6 through 16 are not obvious and are allowable over the rejection under 35 U.S.C. § 103.

As to claim 17, claim 17 claims the invention as a wood chipper (12) including an infeed hopper (14) and an infeed pan (24) pivotally connected to the infeed hopper (14). The wood chipper (12) also includes at least one assist mount (36) connected to the infeed hopper (14). The wood chipper (12) further includes at least one assist member (46) connected to the at least one assist mount (36) and connected to the infeed pan (24) and connected to the infeed hopper (14) to assist an operator in moving a bulk weight of the infeed pan (24) when the infeed pan (24) is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

The reference cited, either alone or modified, does not teach or suggest the claimed invention of claim 17. Specifically, the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator to allow wood material to be placed on the infeed pan before entering the infeed hopper. The Background of the Invention section lacks at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount and to the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In the wood chipper of the Background of the Invention section, there is no assist member to assist an operator in raising and lowering the infeed pan. There is no suggestion or motivation for modifying the wood chipper of the Background of the Invention section.

There is absolutely no teaching of a level of skill in the wood chipper art that a wood chipper can be constructed with at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount and to an infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. The Examiner may not, because he doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See In re Warner, 379 F. 2d 1011, 154 U.S.P.Q. 173 (C.C.P.A. 1967).

The present invention sets forth a unique and non-obvious combination of a wood chipper having an assist assembly that assists the operator in handling the bulk weight of the infeed pan when it is raised or lowered. The reference, if modifiable, fails to teach or suggest the combination of a wood chipper including an infeed hopper, an infeed pan pivotally connected to the infeed hopper, at least one assist mount connected to the infeed hopper, and at least one assist member connected to the assist mount and to the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator as claimed by Applicants. The Examiner has failed to establish a case of prima facie obviousness.

Against this background, it is submitted that the present invention of claim 17 is not obvious in view of the Background of the Invention section. The reference fails to teach or suggest the combination of a wood chipper of claim 17. Therefore, it is respectfully submitted that claim 17 is not obvious and is allowable over the rejection under 35 U.S.C. § 103.

Dependent claims 18 through 23 perfect and further limit independent claim 17. Claim 18 defines that the at least one assist member comprises a spring. Claim 19 defines that

the at least one spring has a first end extending outwardly and a second end extending outwardly to form a general "L" shape. Claim 20 defines that the at least one spring has a plurality of coils disposed between the first end and the second end. Claim 21 defines that the at least one assist mount comprises at least one side member extending from the infeed hopper. Claim 22 defines that the at least one assist mount further comprises a support member extending from the at least one side member. Claim 23 defines that the support member is rotatably secured to the at least one side member. Based on this, it is respectfully submitted that claims 18 through 23 are not obvious and are allowable over the rejection under 35 U.S.C. § 103.

As to claim 24, claim 24 claims the invention as a wood chipper (12) including an infeed hopper (14) and a cutting assembly (18) spaced from the infeed hopper (14). The wood chipper (12) also includes a feed wheel assembly (17) disposed between the infeed hopper (14) and the cutting assembly (18) to feed wood material from the infeed hopper (14) to the cutting assembly (18). The wood chipper (12) includes an infeed pan (24) pivotally connected to the infeed hopper (14) and at least one assist mount (36) connected to the infeed hopper (14). The wood chipper (12) further includes at least one assist member (46) connected to the at least one assist mount (36) and to operatively engage the infeed pan (24) and to operatively engage the infeed hopper (14) to assist an operator in moving a bulk weight of the infeed pan (24) when the infeed pan (24) is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

The reference cited, either alone or modified, does not teach or suggest the claimed invention of claim 24. Specifically, the Background of the Invention section of the present application merely discloses a wood chipper having an infeed pan pivotally connected to an infeed hopper, which is raised and lowered by an operator to allow wood material to be placed

on the infeed pan before entering the infeed hopper. The Background of the Invention section lacks at least one assist member connected to an assist mount and to operatively engage the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. In the wood chipper of the Background of the Invention section, there is no assist member to assist an operator in moving the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. There is no suggestion or motivation for modifying the wood chipper of the Background of the Invention section.

There is absolutely no teaching of a level of skill in the wood chipper art to include at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount to operatively engage the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan. Further, there is no motivation in the art to modify the wood chipper of the Background of the Invention section to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator. The Examiner may not, because he doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. See In re Warner, 379 F. 2d 1011, 154 U.S.P.Q. 173 (C.C.P.A. 1967).

The reference, if modifiable, fails to teach or suggest the combination of a wood chipper including an infeed hopper, a cutting assembly, a feed wheel assembly disposed between the infeed hopper and a cutting assembly to feed wood material from the infeed hopper to the cutting assembly, an infeed pan pivotally connected to the infeed hopper, at least one assist

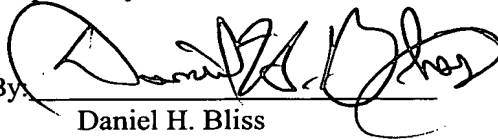
mount connected to the infeed hopper, and at least one assist member connected to the assist mount and to operatively engage the infeed pan and the infeed hopper to assist an operator in moving a bulk weight of the infeed pan when the infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator as claimed by Applicants. The Examiner has failed to establish a case of prima facie obviousness.

The present invention sets forth a unique and non-obvious combination of a wood chipper including at least one assist mount connected to an infeed hopper and at least one assist member connected to the assist mount to operatively engage the infeed pan and the infeed hopper. Advantageously, the wood chipper has an assist assembly that assists the operator in handling the bulk weight of the infeed pan when it is raised or lowered.

Against this background, it is submitted that the present invention of claim 24 is not obvious in view of the Background of the Invention section. The reference fails to teach or suggest the combination of a wood chipper of claim 24. Therefore, it is respectfully submitted that claim 24 is not obvious and is allowable over the rejection under 35 U.S.C. § 103.

In conclusion, it is respectfully submitted that the rejection of claims 1 through 24 is improper and should be reversed.

Respectfully submitted,

By: 
Daniel H. Bliss
Registration No. 32,398

BLISS McGLYNN, P.C.
2075 West Big Beaver Road
Suite 600
Troy, Michigan 48084-3443
(248) 649-6090
Dated: January 26, 2004
Attorney Docket No.: 8027.00015

APPENDIX

The claims on appeal are as follows:

1. A wood chipper comprising:
a movable infeed pan;
at least one assist mount connected to said wood chipper; and
at least one assist member connected to said assist mount and to operatively engage said infeed pan to assist an operator in moving a bulk weight of said infeed pan when said infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.
2. A wood chipper as set forth in claim 1 wherein said at least one assist member comprises a spring.
3. A wood chipper as set forth in claim 1 wherein said at least one assist mount comprises at least one side member extending from an infeed hopper assembly of said wood chipper.
4. A wood chipper as set forth in claim 1 wherein said at least one assist mount further comprises a support member extending from said at least one side member, said at least one assist member being connected to said at least one support member.

5. A wood chipper comprising:
a movable infeed pan;
at least one spring mount connected to said wood chipper; and
at least one spring connected to said spring mount and to operatively engage said infeed pan to assist an operator in moving a bulk weight of said infeed pan when said infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.
6. A wood chipper as set forth in claim 5 wherein said at least one spring is a coil spring.
7. A wood chipper as set forth in claim 5 wherein said at least one spring has a first end extending outwardly and a second end extending outwardly to form a general "L" shape.
8. A wood chipper as set forth in claim 7 wherein said at least one spring has a plurality of coils disposed between said first end and said second end.
9. A wood chipper as set forth in claim 7 wherein said second end is longer than said first end, said second end being adapted to operatively engage said infeed pan.
10. A wood chipper as set forth in claim 7 including a spring retainer connected to said infeed pan to space said second end from said infeed pan.

11. A wood chipper as set forth in claim 5 including a plurality of spring mounts spaced laterally and secured to an infeed hopper assembly of said wood chipper.

12. A wood chipper as set forth in claim 11 including a plurality of springs, one of said springs mounted to one of said spring mounts.

13. A wood chipper as set forth in claim 12 wherein one of said spring mounts and one of said springs is located adjacent said infeed pan.

14. A wood chipper as set forth in claim 5 wherein said at least one spring mount comprises at least one side member extending from an infeed hopper assembly of said wood chipper.

15. A wood chipper as set forth in claim 14 wherein said at least one spring mount further comprises a support member extending from said at least one side member.

16. A wood chipper as set forth in claim 15 wherein said support member is rotatably secured to said at least one side member.

17. A wood chipper comprising:

an infeed hopper;

an infeed pan pivotally connected to said infeed hopper;

at least one assist mount connected to said infeed hopper; and

at least one assist member connected to said at least one assist mount and connected to said infeed pan and connected to said infeed hopper to assist an operator in moving a bulk weight of said infeed pan when said infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.

18. A wood chipper as set forth in claim 17 wherein said at least one assist member comprises a spring.

19. A wood chipper as set forth in claim 18 wherein said at least one spring has a first end extending outwardly and a second end extending outwardly to form a general "L" shape.

20. A wood chipper as set forth in claim 19 wherein said at least one spring has a plurality of coils disposed between said first end and said second end.

21. A wood chipper as set forth in claim 17 wherein said at least one assist mount comprises at least one side member extending from said infeed hopper.

22. A wood chipper as set forth in claim 21 wherein said at least one assist mount further comprises a support member extending from said at least one side member.

23. A wood chipper as set forth in claim 22 wherein said support member is rotatably secured to said at least one side member.

24. A wood chipper comprising:

an infeed hopper;

a cutting assembly spaced from said infeed hopper;

a feed wheel assembly disposed between said infeed hopper and said cutting assembly to feed wood material from said infeed hopper to said cutting assembly;

an infeed pan pivotally connected to said infeed hopper;

at least one assist mount connected to said infeed hopper; and

at least one assist member connected to said at least one assist mount and to operatively engage said infeed pan and to operatively engage said infeed hopper to assist an operator in moving a bulk weight of said infeed pan when said infeed pan is raised to a generally vertical position and lowered to a generally horizontal position by the operator.